

AMENDED IN SENATE APRIL 17, 2013

SENATE BILL

No. 635

Introduced by Senator Leno

February 22, 2013

An act to amend Section 25631 of, and to add Section 25634 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 635, as amended, Leno. Alcoholic beverages: hours of sale.

The Alcoholic Beverage Control Act provides that any on- or off-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor.

This bill would allow ~~the local governing body of a county or a city and county~~ *an on-sale licensee* to apply to the Department of Alcoholic Beverage Control to authorize, with or without conditions on the ~~licensees within those jurisdictions~~ *on-sale license*, the selling, giving, delivering, or purchasing of alcoholic beverages at ~~an on-sale~~ *the* licensed premises between the hours of 2 a.m. and 4 a.m., *upon completion of specified requirements by the local jurisdiction in which the licensee is located*, as provided. This bill would require ~~the local governing body~~ *applicant* to notify specified persons of the application for additional hours and would provide a procedure for protest and hearing regarding the application.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*
- 3 *(a) It is the policy of the state to promote the responsible*
4 *consumption of alcoholic beverages through making multiple*
5 *planning options available to local communities and entertainment*
6 *areas of the state, including the option of extended services hours*
7 *up to a limit of 4 a.m. in communities and areas of the state where*
8 *those extended hours are found by the governing body of the*
9 *responsible community to be proper and appropriate.*
- 10 *(b) It is the policy of the state to encourage local communities*
11 *to implement local entertainment and licensed venue operation*
12 *policies designed for their specific communities and to support*
13 *those local initiatives by all appropriate means.*
- 14 *(c) It is the policy of the state that modified closing times can*
15 *improve the quality of life in local jurisdictions by mitigating public*
16 *safety and nuisance issues associated with the uniform 2 a.m.*
17 *closing hour.*
- 18 *(d) It is the policy of the state that local communities consider*
19 *different approaches to address issues of the 2 a.m. uniform closing*
20 *hour and encourage responsible consumption by, including, but*
21 *not limited to, extending service hours within a limited*
22 *geographical area, staggering service hours to alleviate stress on*
23 *public services, differentiating between the end of sale hour and*
24 *the end of consumption hour, and extending service hours only on*
25 *holidays or specific days of the week.*
- 26 *(e) At least 15 states across the country delegate complete or*
27 *partial authority for setting service hours to local jurisdictions or*
28 *allow local jurisdictions to extend the hours of service, subject to*
29 *state approval.*
- 30 *(f) The Legislature supports a well-planned and managed*
31 *nightlife that can have a profound positive impact on a local*
32 *economy, generating direct tax revenues, and growing public funds*

1 *through increased property value, revitalized business districts,*
2 *and increased tourism.*

3 *(g) The Legislature supports the world-renowned California*
4 *licensed restaurant, venue, and entertainment industry, which*
5 *generates more than fifty billion dollars (\$50,000,000,000) every*
6 *year in consumer spending in California communities on jobs,*
7 *goods and services, and related industries, and that attracts*
8 *world-class acts as well as tourists to visit and enjoy California.*

9 *(h) The Legislature has determined that it is in the best interest*
10 *of the State of California for extended hours of operation policies*
11 *to be administered by the Department of Alcoholic Beverage*
12 *Control in connection with applications for additional hour*
13 *privileges, with the fees for those applications to be determined*
14 *and assessed by the department at a rate that will fully reimburse*
15 *the department for administrative expenses.*

16 **SECTION 1.**

17 **SEC. 2.** Section 25631 of the Business and Professions Code
18 is amended to read:

19 25631. (a) (1) Except as provided in subdivision (b), any on-
20 or off-sale licensee, or agent or employee of that licensee, who
21 sells, gives, or delivers to any persons any alcoholic beverage or
22 any person who knowingly purchases any alcoholic beverage
23 between the hours of 2 a.m. and 6 a.m. of the same day, is guilty
24 of a misdemeanor.

25 (2) For the purposes of this subdivision, on the day that a time
26 change occurs from Pacific standard time to Pacific daylight saving
27 time, or back again to Pacific standard time, “2 a.m.” means two
28 hours after midnight of the day preceding the day such change
29 occurs.

30 (b) (1) In a city, county, or city and county that has additional
31 serving hours pursuant to Section 25634, any on-sale licensee, or
32 agent or employee of the licensee, who sells, gives, or delivers to
33 any person any alcoholic beverage or any person who knowingly
34 purchases any alcoholic beverage between the hours of 4 a.m. and
35 6 a.m. of the same day, is guilty of a misdemeanor.

36 (2) For the purposes of this subdivision, on the day that a time
37 change occurs from Pacific standard time to Pacific daylight time,
38 or back again to Pacific standard time, “4 a.m.” means four hours
39 after 12 midnight of the day preceding the day the change occurs.

1 ~~SEC. 2.~~

2 SEC. 3. Section 25634 is added to the Business and Professions
3 Code, to read:

4 25634. (a) Notwithstanding Section 25631, the department
5 may authorize, with or without conditions ~~on the licensees~~, the
6 selling, giving, delivering, or purchasing of alcoholic beverages
7 at an *individual* on-sale licensed premises between the hours of 2
8 a.m. and 4 a.m. within a *city*, county, or a city and county if the
9 local governing body of that *city*, county, or city and county, or
10 its designated subordinate officer or body, ~~applies to the department~~
11 ~~and shows the department the public convenience or necessity~~
12 ~~served by the additional hours.~~ *does the following:*

13 (1) *Develops and approves a local plan that meets the following*
14 *requirements:*

15 (A) *Shows that the public convenience or necessity will be served*
16 *by the additional hours.*

17 (B) *Identifies the area that will be affected by the additional*
18 *hours and demonstrates how that area will benefit from the*
19 *additional hours.*

20 (C) *Shows that residents and businesses within the additional*
21 *hours service area support the additional hours.*

22 (D) *Includes an assessment by local law enforcement regarding*
23 *the potential impact of an additional hours service area and the*
24 *public safety plan, created by local law enforcement, for managing*
25 *those impacts that has been approved by the local governing body.*

26 (E) *Shows that transportation services are readily accessible*
27 *in the additional hours service area during the additional service*
28 *hours.*

29 (F) *Includes programs to increase public awareness of the*
30 *transportation services available in the additional hours service*
31 *area and the impacts of alcohol consumption.*

32 (2) *Resolves and certifies the local plan and submits the local*
33 *plan to the department.*

34 (b) *Upon receipt of a local plan developed pursuant to*
35 *paragraph (1) of subdivision (a), the department shall review the*
36 *local plan to ensure compliance with existing law and regulations*
37 *promulgated by the department. The department shall review the*
38 *local plan within ____ days of receipt and shall notify the local*
39 *governing body of its approval or denial of the plan. During the*

1 *review process the department shall post the local plan on its*
2 *Internet Web site.*

3 *(c) An on-sale licensee shall not apply for additional hours*
4 *pursuant to this section until the department has approved the*
5 *local plan of the city, county, or city and county in which the*
6 *licensed premises is located.*

7 ~~(b)~~

8 *(d) (1) Upon receipt of an application by an on-sale licensee*
9 *for additional hours pursuant to this section, the department shall*
10 *make a thorough investigation to determine whether the additional*
11 *hours would serve the public convenience or necessity sought by*
12 *the applicant would unreasonably interfere with the quiet*
13 *enjoyment of their property by the residents of the city, county, or*
14 *city and county in which the applicant's licensed premises are*
15 *located.*

16 ~~(2) The local governing body of the county or city and county~~
17 ~~applicant shall notify the law enforcement agencies of the county~~
18 ~~or city and county city, county, or city and county, the residents~~
19 ~~of the city, county, or city and county located within 500 feet of~~
20 ~~the premises for which additional hours are sought, and any other~~
21 ~~interested parties, as determined by the local governing body, of~~
22 ~~the application by an on-sale licensee for additional hours pursuant~~
23 ~~to this section within 30 consecutive days of the filing of the~~
24 ~~application, in a manner determined by the local governing body.~~

25 *(3) Protests may be filed at any office of the department within*
26 *30 days from the first date of notice of the filing of an application*
27 *by an on-sale licensee for additional hours. The time within which*
28 *a local law enforcement agency may file a protest shall be extended*
29 *by the period prescribed in Section 23987.*

30 *(4) The department may reject protests, except protests made*
31 *by a public agency or public official, if it determines the protests*
32 *are false, vexatious, frivolous, or without reasonable or probable*
33 *cause at any time before hearing thereon, notwithstanding Section*
34 ~~24016 or 24300.~~ *If, after investigation, the department recommends*
35 *that additional hours be authorized notwithstanding a protest by a*
36 *public agency or a public official, the department shall notify the*
37 *agency or official in writing of its determination and the reasons*
38 *therefor, in conjunction with the notice of hearing provided to the*
39 *protestant pursuant to Section 11509 of the Government Code. If*
40 *the department rejects a protest as provided in this section, a*

1 protestant whose protest has been rejected may, within 10 days,
2 file an accusation with the department alleging the grounds of
3 protest as a cause for revocation of the additional hours and the
4 department shall hold a hearing as provided in Chapter 5
5 (commencing with Section 11500) of Part 1 of Division 3 of Title
6 2 of the Government Code.

7 (5) This section shall not be construed as prohibiting or
8 restricting any right that the individual making the protest might
9 have to a judicial proceeding.

10 (e)

11 (e) (1) If, after investigation, the department recommends that
12 additional hours be authorized, with or without conditions on the
13 ~~licensees,~~ *applicant's license*, notwithstanding that one or more
14 protests have been accepted by the department, the department
15 shall notify the local governing body and all protesting parties
16 whose protests have been accepted in writing of its determination.

17 (2) Any person who has filed a verified protest in a timely
18 fashion pursuant to subdivision ~~(b)~~ (d) that has been accepted
19 pursuant to this ~~article~~ *section* may request that the department
20 conduct a hearing on the issue or issues raised in the protest. The
21 request shall be in writing and shall be filed with the department
22 within 15 business days of the date the department notifies the
23 protesting party of its determination as required under paragraph
24 (1).

25 (3) At any time prior to the issuance of the license, the
26 department may, in its discretion, accept a late request for a hearing
27 upon a showing of good cause. Any determination of the
28 department pursuant to this subdivision shall not be an issue at the
29 hearing nor grounds for appeal or review.

30 (4) If a request for a hearing is filed with the department
31 pursuant to paragraph (2), the department shall schedule a hearing
32 on the protest. The issues to be determined at the hearing shall be
33 limited to those issues raised in the protest or protests of the person
34 or persons requesting the hearing.

35 (5) Notwithstanding that a hearing is held pursuant to paragraph
36 (4), the protest or protests of any person or persons who did not
37 request a hearing as authorized in this section shall be deemed
38 withdrawn.

39 (6) If a request for a hearing is not filed with the department
40 pursuant to this section, any protest or protests shall be deemed

1 withdrawn and the department may ~~issue the license~~ *approve the*
2 *on-sale licensee's application for additional hours* without any
3 further proceeding.

4 (7) If the person filing the request for a hearing fails to appear
5 at the hearing, the protest shall be deemed withdrawn.

6 ~~(d)~~

7 (f) The department shall notify the ~~on-sale licensees within the~~
8 ~~county or city and county~~ *applicant* of the outcome of the
9 application for additional hours. Any conditions placed upon the
10 ~~licensees license~~ pursuant to this section shall be subject to Article
11 1.5 (commencing with Section 23800).

12 ~~(e)~~

13 (g) The ~~local governing body~~ *applicant* shall, at the time of
14 application for additional hours pursuant to this section, accompany
15 the application with a fee of ____ dollars (\$____). Fees collected
16 pursuant to this section shall be deposited in the Alcohol Beverage
17 Control Fund.

18 ~~SEC. 3.~~

19 *SEC. 4.* No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.